



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable John D. Reed, Commissioner
Bureau of Labor Statistics
Austin, Texas

Dear Sir:

Attention: Mr. C. E. Steward
Chief Inspector
Boiler Inspection Division

Opinion No. 0-3206

Re: Promulgation of proposed new
rules for Boiler Inspection
Division

We have your letter of September 3rd enclosing a proposed new rule which you state you would like to incorporate in a new edition of the Boiler Law, Rules and Regulations. You ask our advice as to the method of procedure to be followed in incorporating the proposed new rule.

Section 6 of the Texas Boiler Inspection Law contains the statutory requisites for putting any new rule or amendment into effect, and the procedure outlined therein should be scrupulously followed. The material part of such section reads as follows:

"Before any rule, regulation or order is promulgated, adopted, enforced, amended, modified or repealed by the Commissioner a public hearing shall be held by him, and not less than ten (10) days before such hearing notice thereof shall be published in at least three (3) newspapers published and having general circulation in the State of Texas, such newspapers to be selected by the Commissioner. After the adoption of rules, regulations, and orders by the Commissioner, a complete copy of same shall be published in at least three (3) newspapers, as in the notice of the hearing prior to their adoption, on two (2) different days not more than ten (10) days apart and within thirty (30) days after the adoption of such rules, regulations and orders; provided that

in lieu of publishing in newspapers the rules, regulations and orders by the Commissioner, as stated above, the Commissioner may publish and circulate said rules, regulations and orders or the repeal, modification or amendment of any such rule, regulation or order in such form or manner as he may determine; and such rules, regulations and orders shall become effective within ten (10) days after date of notice of adoption thereof or final publication, or at such later time as the Commissioner may, in the rules, regulations and orders, determine. The Commissioner is hereby authorized and empowered, in case of extreme emergency, to promulgate and enforce temporary rules, regulations and orders as he may deem necessary, without publishing the same as hereinabove directed; provided, however, that when such temporary rules, regulations or orders are adopted the same shall not be effective for a period of more than twenty (20) days and no criminal prosecution, as hereinafter provided, shall be had until the provisions of Section 16 of this Act have been complied with."

Section 16, thus referred to, reads as follows:

"An affidavit under the seal of the Commissioner executed by said Commissioner or the Inspector of Boilers or any Deputy Inspector, setting forth the terms of any order of the Commissioner and that it has been adopted, promulgated and published, and was in effect at any date during any period specified in such affidavit, shall be prima facie evidence of all such facts and such affidavit shall be admitted in evidence in any action, civil or criminal, involving such order and the publication thereof without further proof of such promulgation, adoption, or publication and without further proof of its contents."

We have prepared and attach hereto copy of notice of public hearing. We have left blank the date of hearing, and you should insert the date of your choice, and then have the identical notice published in any three newspapers of general circulation in Texas which you may choose. You should have the advertisement or notice published by the three separate newspapers on the same date.

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After publication of notice and hearing held on the date specified by you, if the new rule is adopted, you may then publish the new rule "in such form or manner" as may be determined. As you stated orally to the writer that you wished to publish the rules, including the new rule, if adopted, in pamphlet or booklet form of the same style and format employed by your predecessors in office, we have checked the law with reference to such publication and find no legal objection thereto.

We have, therefore, prepared the forms to be used in such a publication, and submit same to be used, if, after such hearing, you adopt the new rule.

If the above is not thoroughly understood by your office, or if we may otherwise assist you, do not hesitate to call upon us.

Yours very truly

APPROVED SEPT. 5, 1941

ATTORNEY GENERAL OF TEXAS

/s/ Grover Sellers

By

FIRST ASSISTANT
ATTORNEY GENERAL

/s/ Benjamin Woodall
Assistant

BW:GO

ENCLOSURE

APPROVED OPINION COMMITTEE BY B.W.B. CHAIRMAN

O.K.
W.R.K.

LEGAL NOTICE

Notice in conformity to the provisions of Sections 6 and 16 of the Texas Boiler Inspection Law (Acts 45th Legislature, Ch. 436, p. 893, as amended) is hereby given of a public hearing to be held at my office in the City of Austin, Travis County, Texas, on _____, 1941, to consider amending the Boiler Rules and Regulations of February 23, 1938, heretofore adopted by the Commissioner of the Bureau of Labor Statistics by adding thereto a new section to be known as Rule 26, and reading as follows: "Rule 26. Foundation and Levels. All boilers, vertical and portable oil field locomotive types, shall be kept level and must be provided with a suitable and substantial foundation, such as steel, concrete, brick, or stone. The vertical type mud rim or bottom of boilers' settings shall not be less than 6 inches from the ground. The locomotive type boilers' mud rim or wet bottom, shall have the foundation of its setting not less than 12 inches from the floor or ground. All boilers' mud rims shall be accessible to the boiler inspector. No boilers bottom or mud rim shall be permitted to leak. It shall be kept dry and free from dampness. The front section or smoke box of a locomotive type boiler shall have a suitable foundation under this section to support the front part of the boiler that it may be kept level at all times. Boilers that are not kept level and do not have substantial foundations are subject to removal from service until such provisions are provided."

John D. Reed,
Commissioner, Bureau of
Labor Statistics

ADOPTION OF AMENDMENT

WHEREAS, in conformity to the provisions of Sections 6 and 16 of the Texas Boiler Inspection Law (Acts, 45th Legislature, 1937, Ch. 436, p. 893, as amended, Acts 46th Legislature, 1939, Ch. 1, "Labor", p. 433) the Commissioner, after due notice, has held a public hearing at Austin, Texas, on _____, 1941, to consider amending the Boiler Rules and Regulations of February 23, 1938, heretofore adopted by the Commissioner of the Bureau of Labor Statistics, by adding thereto a new section to be known as Rule 26; and

WHEREAS, the Commissioner finds from all the evidence heard and introduced at the said hearing, that the safety of life and property requires that said Rule 26 be promulgated and passed,

NOW THEREFORE, it is ordered by the Commissioner that said Rule 26 shall be effective from and after October 1, 1941, and shall be obeyed by all manufacturers of boilers and by all persons dealing in the sale of boilers and the installation thereof and all persons using said boilers within the State of Texas, such new Rule No. 26 being as follows:

Rule 26. Foundations and Levels

All boilers, vertical and portable oil field locomotive types, shall be kept level and must be provided with a suitable and substantial foundation, such as steel, concrete, brick, or stone. The vertical type mud rim or bottom of boilers' settings shall not be less than 6 inches from the ground. The locomotive type boilers' mud rim or wet bottom, shall have the foundation of its setting not less than 12 inches from the floor or ground. All boilers' mud rims shall be accessible to the boiler inspector. No boilers bottom or mud rim shall be permitted to leak. It shall be kept dry and free from dampness.

The front section or smoke box of a locomotive type boiler shall have a suitable foundation under this section to support the front part of the boiler that it may be kept level at all times. Boilers that are not kept level and do not have substantial foundations are subject to removal from service until such provisions are provided.

It is further ordered that the previous order of August 1, 1937, as amended by the order of February 23, 1938, shall continue in full force and effect.

It is further ordered that in lieu of publication in newspapers that this order shall be published in booklet form, copies of which shall be retained by the Commissioner, Chief Boiler Inspector and any authorized Boiler Inspector; and anyone desiring a copy may obtain same by paying the actual cost of printing and handling.

IN TESTIMONY WHEREOF, I have hereunto signed my official signature and caused the seal of the Bureau of Labor Statistics of the State of Texas to be affixed at the City of Austin, this the _____ day of _____, A. D. 1941.

(SEAL)

Commissioner, Bureau of
Labor Statistics